EDITOR'S NOTE

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ORIGINAL

NO. 87-1347

Supreme Court, U.S.
FILED
MAR 8 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE
UNITED STATES

October Term 1987

LeROY S. ZIMMERMAN, ET AL
Petitioners

v.

PARA-PROFESSIONAL LAW CLINIC, ET AL
Respondents

---

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

---

COMES NOW, The Respondents via Ahmad Abdul Jabbar, a/k/a Roy Williams, Hugh Williams and Zebbie J. Clifton, and moves this Court to permit them to proceed in forma pauperis in filing their Reply Brief To Petitioners' Writ of Certiorari, without prepayment of fees and cost or security therefor.

In Support hereof, Respondents assert they werepermitted to proceed in forma pauperis in the United States District Court For The Eastern District of Pennsylvania (i.e. see Order, 49a) and in the United States Court of Appeals For The Third Circuit (i.e. see Order, 50a). As the attached Affidavit indicates, Respondents are unable to pay such fees or costs, or give security therefor, and ergo request this Court allow them to proceed in forma pauperis pursuant to 28 U.S.C. Section 1915

ahmad abdul Jabbar-al Samad
a/k/a Roy Williams
Ahmad Abdul Jabbar-al Samad
a/k/a Roy Williams
Counsel (Pro Se) for Respondents

Hugh Williams
Hugh Williams
Co-counsel (Pro Se) for Respondents

Zebbie J. Clifton
Zebbie J. Clifton
Co-counsel (Pro Se) for Respondents

Dated: MAR 8 1988

83-81

ORIGINAL

NO. 87-1347

IN THE SUPREME COURT OF THE
UNITED STATES

October Term 1987

LeROY S. ZIMMERMAN, ET AL
Petitioners

v.

PARA-PROFESSIONAL LAW CLINIC, ET AL
Respondents

---

AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED
IN FORMA PAUPERIS

---

I, Ahmad Abdul Jabbar-al Samad, a/k/a Roy Williams, Hugh Williams, and Zebbie J. Clifton being first duly sworn/affirmed, depose and say that we represent the Respondents in the above entitled case. That in support of our motion to proceed in forma pauperis without being required to prepay fees, costs or give security therefore, we state that because of our poverty and /or impecuniousness we are unable to pay the costs of responding in said proceedings or to give security therefor; that we believe we are entitled to the redress sought.

We further swear/affirm that the facts set forth below relating to our ability to pay the costs of filing a response to the Petitioners' Writ of Certiorari are true.

1. Are you presently employed?

   We are presently employed in the Para-Professional Law Clinic, Inc. being paid prison wages of approximately fifthy three dollars per month to each of us individually. However the Para-Professional Law Clinic, Inc. presently has eight dollars and twelve cents in the corporate account.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

The respondent Ahmad Abdul Jabbar-al Samad, a/k/a Roy Williams, has received a fifty dollar money order as a Christmas gift from a personal friend in society which was sent to his children for de minimis support.

The respondent Hugh Williams received a twenty dollar money order from his mother as a birthday gift, and a ten dollar money order from a friend as a Christmas gift, which he sent to his children for deminimis support.

The respondent Zebbie J. Clifton had none.

The Para-Professional Law Clinic, Inc. has received none.

3. Do you own any cash or checking or savings accounts?

The respondent Ahmad Abdul Jabbar-al Samad, a/k/a Roy Williams ownes none.

The respondent Hugh Williams, owns none.

The respondent Zebbie J. Clifton, owns none.

The Para-Professional Law Clinic, Inc., owns a checking account at the Bank of Pennsylvania in Allentown, Pennsylvania; account No. 8602-5082. It presently has eight dollars and twelve cents therein.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing.)?

The respondent Ahmad Abdul Jabbar-al Samad, a/k/a Roy Williams owns none.

The respondent Hugh Williams owns none.

The respondent Zebbie J. Clifton owns none.

The Para-Professional Law Clinic, Inc., owns none except office furnishings and paraphernalia related to legal work.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

The respondent Ahmad Abdul Jabbar-al Samad, a/k/a Roy Williams sends most of his de minimis prison wages to his son, Roy Williams, Jr.

The respondent Hugh Williams sends his de minimis prison wages to his two youngest children, Hugh Williams, Jr. and Dionne Williams.

The respondent Zebbie J. Clifton sends his de minimis prison wages to his five (5) children.

The Para-Professional Law Clinic, Inc. has none as to financial support, however (2500) twenty-five hundred inmates for legal support, relationship thereto servant.

We understand that a false statement or answer to any questions in this affidavit will subject us to penalities for perjury.

Ahmad Abdul Jabbar-al Samad
a/k/a Roy Williams
Ahmad Abdul Jabbar-al Samad
a/k/a Roy Williams

Hugh Williams
Hugh Williams

Zebbie J. Clifton
Zebbie J. Clifton

Sworn (Affirmed) and Subscribed to before me, this 7th day of March, 1988

Stanley Webb
NOTARY PUBLIC

STANLEY WEBB, Notary Public
Graterford, Montgomery Co., PA
My Commission Expires May 5, 1988

*Para-Professional Law Clinic, Inc.*

P.O. BOX 244

Graterford, Pennsylvania 19426

March 8, 1988

*Fiat Justitia Deo Volente*

Clerk of Court
United States Supreme Court
1 First Street N.E.
Washington, D.C. 20543

RECEIVED
MAR 11 1988
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Re: LeRoy S. Zimmerman, et al
v. Para-Professional Law Clinic
No. 87-1347

Dear Mr. Spaniol,

Enclosed find (1) one copy of Respondent's Brief in Opposition To Petition For Writ of Certiorari To The Third Circuit Court of Appeals to be filed with the Court. Thank you.

Respectfully,

Hugh Williams
Hugh Williams
Sec'y

Service:
Office of Attorney General

ORIGINAL

NO. 87-1347

IN THE SUPREME COURT OF THE
UNITED STATES

October Term 1987

LeROY S. ZIMMERMAN, ET AL
Petitioners

v.

PARA-PROFESSIONAL LAW CLINIC, ET AL
Respondents

---

# RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

---


Ahmad Abdul Jabbar-al Samad
a/k/a Roy Williams, Pro Se
Counsel for Respondents

Hugh Williams, Pro Se
Co-counsel for Respondents

Zebbie J. Clifton, Pro Se
Co-counsel for Respondents

PARA-PROFESSIONAL LAW CLINIC, INC.
State Correctional Institution
Post Office Box 244
Graterford, Pennsylvania 19426

## COUNTER QUESTION PRESENTED FOR REVIEW

The Court of Appeals correctly affirmed the District Court's holding; that an adequate prison law library per se does not provide inmates with meaningful access to the Courts in the case sub judice.

## LIST OF PARTIES

PETITIONERS

LeROY S. ZIMMERMAN, Attorney General of Commonwealth of Pennsylvania

DAVID S. OWENS, JR., Commissioner of Corrections of the Commonwealth of Pennsylvania

CHARLES H. ZIMMERMAN, Superintendent of Graterford Prison

THOMAS D. STACHELEK, Deputy Superintendent of Graterford Prison

RESPONDENTS

PARA-PROFESSIONAL LAW CLINIC

GEORGE BRADLEY, #F-0281

CURTIS EL JARVIS, #F-6690

MONSERRATE ZAPATA, #F-0430

BEBLEY C. WELLS, JR., # M-0253

CARL MILES, #F-7808

ZEBBIE CLIFTON, #F-5043

HAROLD X SMITH, #F-6433

ON BEHALF OF ALL OTHER INMATES OF THE GRATERFORD INSTITUTION SIMILARLY SITUATED.

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16 P.S. Section 9960.1

16 P.S. Section 9960.6

16 P.S. Section 9960.10a

42 Pa.C.S.A. Section 9541 et seq.

## OPINIONS BELOW

The Order of the Court of Appeals For The Third Circuit Affirming the judgment of the United States District Court For The Eastern District of Pennsylvania, has been reported at 835 F.2d 285 (3rd Cir. 1987), and attached hereto as Appendix beginning at 1a.

The Opinion of the United States District Court For The Eastern District of Pennsylvania is reported at 656 F.Supp. 1099 (E.D.Pa. 1987) and is attached hereto as Appendix beginning at 3a.

## JURISDICTION

The Respondents (i.e. Para-Professional Law Clinic, Inc.) Reply Brief to Petitioners (i.e. LeRoy S. Zimmerman, et al) Writ of Certiorari falls within the Court's jurisdiction pursuant to 28 U.S.C. Section 1254(1); accord Rule 34.2 et seq. ofthe Rules of the Supreme Court of the United States.

## CONSTITUTIONAL PROVISIONS

The First Amendment of the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment of the United States Constitution provides in pertinent part:

> Section 1
>
> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## FEDERAL STATUTES

42 U.S.C.A. Section 3711 et seq:

Federal Law Enforcement Assistance Administration

42 U.S.C. Section 1983:

The Civil Rights Act of 1871

> Section 1983
>
> Every person who, under color of any statute, ordinance, regulation, custon, or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity,

(Cont. next page)

or other proper proceeding for redress. For the purposes of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

## STATE STATUTES & RULES

16 P,S. Section 5199.8A

The Board of Commissioners of a county of the second class A may appropriate moneys for payment to nonprofit legal aid associations or societies, or county bar associations who provide legal aid services for indigent persons in civil matters.

16 P.S. Section 9960.1 thru 9960.10a

Section 9960.6 Duties

(a) The public defender shall be responsible for furnishing legal counsel, in the following types of cases, to any person, who for lack of sufficient funds, is unable to obtain legal counsel:
(1) where a person is charged with juvenile delinquency;
(2) critical pretrial identification procedures;
(3) preliminary hearings;
(4) State Habeas Corpus proceedings;
(5) State trials, including pretrial and posttrial motions;
(6) Superior Court appeals;
(7) Pennsylvania Supreme Court appeals;
(8) Post Conviction hearing, including proceedings at the trial and appellate levels;
(9) Criminal extradition proceedings;
(10) Production and parole proceedings and revocation thereof;
(11) In any other situations where representations is constitutionally required.

(b) The public defender, after being satisfied of the person's inability to procure sufficient funds to obtain legal counsel to represent him, shall provide such counsel.
Every person who requests legal counsel shall sign a affidavit that he is unable to procure sufficient funds to obtain legal counsel to represent him and shall provide, under oath, such other information as may be required by the court, the public defender, or the Pennsylvania Rules of Criminal procedure.

(c) The public defender, when appointed by the court, shall furnish legal counsel to persons who are or may be subject to commitment in a proceeding under the act of October 20, 1966 (3rd Sp. Sess., P.L. 96 No. 6), known as the Mental Health and Mental Retardation Act of 1966.

Section 9960.10a Expenses for parole proceedings

The county which imposed the sentence from which was defendant was paroled shall be responsible for reimbursing the public defender's office of any other county for reasonable expenses incurred for representing that defendant in a parole revocation proceeding and appeals therefrom.

42 Pa.C.S.A. Section 9541 et seq.

Pennsylvania Post Conviction Hearing Act.

PENNA. RULES OF CRIMINAL PROCEDURE

Rule 316 Assignment of Counsel

(a) In Summary Cases

Counsel shall be assigned in all summary cases to all defendants who are without financial resources of who are otherwise unable to emply counsel when there is a likelihood that imprisonment will be imposed.

(b) In Court cases

In all court cases counsel shall be assigned prior to the preliminary hearing to all defendants who are without financial resources or who are otherwise unable to employ counsel.

(c) In All cases

(i) The court of its own motion, shall assign counsel to represent a defendant whenever the interests of justice require it.

(ii) A motion for change of counsel by a defendant to whom counsel has been assigned, shall not be granted except for substantial reasons.

(iii) Where counsel has been assigned, such assignment shall be effective until final judgment, including any proceeding upon direct appeal.

## STATEMENT OF FACTS

It is incontrovertible the petitioners herein permitted the respondents herein to form the Para-Professional Law Clinic, Inc. (hereinafter Law Clinic) in 1971 pursuant to this Court's decision in Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.ed 2d 718 (1969); the purpose thereof being to aid fellow prisoners unable to do their own legal work to have access to the courts to present presumptive meritorious legal claims.

It is further incontrovertible that respondents herein were permitted to carry out their function for 7 years prior to the decision of Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491 (1977).

On December 14th 1977 the respondents Law Clinic were informed to cease operations and work carried out by them by the petitioners. The December 14th 1977 order to close the Law Clinic by petitioners precipitated the filing of a civil rights complaint which concluded in the granting of a preliminary injunction and the reopening of the Law Clinic. Cf. Wade v. Kane, 448 F.Supp. 678 (E.D.Pa. 1978) aff'd mem. 591 F.2d 1338 (3rd Cir. 1979)

Subsequently another complaint was filed in the name of the corporation with officers and members thereof named as subsidiary plaintiffs. This subsequent complaint raised facsimile issues to those raised in Wade v. Kane, supra, ergo the complaints were consolidated and the evidence from Wade v. Kane, supra, incorporated in the complaint sub judice. Cf. Para-Professional Law Clinic, et al v. Kane, et al (hereinafter P.P.L.C. v. Kane): 4a & 5a (i.e. letter "a" after the number being appendix attached hereto)

After settlement negotiations failed to bare fruition, a final hearing (i.e. tripartite hearing) was held after which, eftsoons the Court transmitted the preliminary injunction into a permanent one via a bifurcated order dated March 25, 1987 and March 27, 1987. Cf. 47a & 48a. The District Court per Honorable Joseph S. Lord, III, Senior Judge held inter alia that closing the Law Clinic would violate the rights of access to the Courts for innumerous inmates at Graterford, including but not excluding those in administrative or disciplinary custody, illiterate, functionally illiterates, those who do not speak English, and those unable to understand legal materials or carry out basic legal writing to prepare petitions and complaints, etc.

The holding of the District Court in their judgment was affirmed by a triumvirate of judges of the Third Circuit Court of Appeals for the reasons advanced in the District Court's opinion. (2a)

The petitioners herein have installed a law library 7 years ex post facto the Law Clinic's functioning with their permission and behest, which was not found to be adequate until March 25, 1987 (i.e. the date of the District Court's opinion)(21a)

The State's law library employs six or seven reference aids (7a); reference aids are not permitted to give inmate legal assistance or advice (7a); nor are they required to have training in legal research. However one out of the six working in the library has had de-minimis training. (8a)

Inmates in general population gain access to the law library (i.e. the library is located in an area away from the housing blocks) by obtaining a pass from their housing block officer (9a). However, passes to the library are not always honored arbitrarily (9a).

Inmates in general population may visit a Law Clinic Office on the housing block for legal assistance at anytime they desire the same without need of a pass. (13a & 14a)

The Law Clinic provides legal assistance to inmates in administrative and disciplinary custody, via a special pass from the petitioners to carry out the same. (14a)

The Law Clinic has prepared and filed documents for direct appeals, motions in arrest of judgment, and for new trial, Post Conviction Hearing Act, (i.e. pursuant to 42 Pa.C.S.A. § 9541 et seq.), Habeas Corpus Petitions, Civil Rights Actions, etc., etc. (14a & 15a)

The Law Clinic members work in excess of twelve hours per day on behalf of inmates, and have on numerous occasions provided adequate and successful legal representation for Graterford inmates (i.e. an incontrovertible fact). (15a)

Graterford has 1400 inmates of 2400 inmates who are functionally illiterated. (11a - 12a)

As much as 80 per cent of Graterford inmates are unable to read and comprehend legal refernce materials. (16a)

Law Clinic members are prohibited from receiving compensation from inmates for sevices rendered. Graterford pays between $520 and 820 dollars per month in salary to members of the Law Clinic. (16a) (There are 16 to 20 members of the Law Clinic. (14a)).

The Law Clinic services many inmates unable to obtain Court appointed counsel. Inmates are generally unable to obtain Court appointed counsel to ascertain whether they have claims upon which relief can be granted. (16a)

By representing inmates at a very low compensation from Graterford and without fee from inmates, the Law Clinic enables Courts to avoid incurring the expense of appointing counsel in many cases. (16a - 17a )

The Law Clinic cell block offices provide private areas conducive to confidential legal communications. (17a)

Graterford inmates may do legal work in their cells. However inmates are not permitted inside another inmate's cell. Ergo, inmates cells may not be used for confidential legal discussions. (18a)

Due to the noise level and traffic interruptions, the cell block recreation facilities are unsuitable for confidential legal discussions. (18a) If the Law Clinic were closed, members thereof would be assigned to other full-time jobs. (i.e. The petitioners would still have to pay the $520 to 820 dollars of salary for the other job assignments.) (18a)

Most of the Law Clinic offices are not suitable for housing inmates. (20a)

The respondents also set forth there was a prior Consent Decree settlement pursuant to the Law Clinic with petitioners set forth in Tate v. Werner, 393 F. Supp. 1318 (E. D. Pa. 1975); which provided for the Law Clinic to continue legal services to Graterford inmates.

## REASONS FOR NOT GRANTING THE WRIT

1. The petition should not be granted for there is no confusion among the Circuits regarding the contours of inmates' right of access to the Courts needing resolution.

Contrary to petitioners' assertions the Court of Appeals in affirming the District Court's application of Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491 (1977) was correct and did not extend the reach of the Bounds holding beyond its analytical limits, nor impose a duty on the State which surpasses any constitutional requirement.

The petitioners seek this Court's review, and desires the same to be in vacuo. Non obstante respondents aver it is incontrovertible our nascence was 7 years ex post facto Bounds, supra, with the consent and behest of petitioners. When ipse dixit after the Bounds decision in 1977 petitioners decided to add the dimension of a law library, and eradicate the Law Clinic whom Graterford inmates had grown to depend on for access to the Courts.

This maugre petitioners' acquiescence in the Consent Decree settlement set forth in Tate v. Werner, 393 F.Supp. 1318 (E.D.Pa. 1975); i.e. legal services would be provided to Graterford inmates by the Para-Professional Law Clinic. Note: No appeal has ever been taken thereon.

Respondents assert this Consent Decree settlement has transmutted into a customs and usage. For respondents have shown that the party (i.e. petitioners) against whom it will apply has actual knowledge of the custom and is bound by it for that reason. Cf. Jacobson v. Leonard, 406 F.Supp. 515, 520-1 (E.D.Pa. 1976)

The petitioners have asserted the decision of the Third Circuit is in conflict with four other circuits anent the application of Bounds, e.g. see: Footnote 4 on page 16 of Petitioners' Writ of Certiorari and cases cited therein.

It is obvious the petitioners have miscontrued the cases cited in support of their alleged conflict with other circuits ubi supra, and in support thereof respondents set forth a review of the same desultorily to those in Footnote 4 on page 16 of Petitioners' Writ of Certiorari. However seriatim as set forth beginning on page 17 of Petitioners' Writ of Certiorari.

In Hooks v. Wainright, 536 F.Supp. 1330 (E.D. Fla. 1982), Rev'd 775 F.2d 1433 (11th Cir. 1985), the District Court held any acceptable plan for insuring Florida prisoners meaningful access to the Courts as required by Bounds v. Smith, must include a provision for the assistance of counsel. The 11th Circuit reversed declaring Bounds does not require states to provide legal counsel to inmates. Non obstante the Circuit did recognize providing inmates access to those knowledgeable in law was a far cry from providing counsel. Id. 775 F.2d at 1436-37. The Third Circuit did no more than just that in the case sub judice, i.e. provide access to prisoners to those knowledgeable in the law; which is a far cry from providing counsel.

The case of Campbell v. Miller, 787 F.2d 217 (7th Cir. 1986) is distinguishable from the case sub judice, (i.e. as set forth on pages 19 and 20 in Petitioners' Writ of Certiorari). Campbell issued a challenge to the restrictions on the visitation of counsel at Marion Federal Penitentiary, the highest level maximum security prison in the Federal system. Id. 787 F.2d 220, 227.

He challenged the limit of day his attorney could visit him, and the necessity of the attorney giving officials 24 hour notice of the visit. Cf. Id. 787 F.2d at 227, which the Court held under those circumstances was not unconstitutional.

However the crux of Campbell's complaint as coupled with the restriction on counsel's visits was he did not have adequate access to the law library. He was immured in the control unit for allegedly being a threat to others and the orderly operation of the institution. He allegedly stabbed another inmate in the law library at Marion. Vide: 787 F.2d at 229 Footnote 20. Non obstante Campbell's alleged security threat the Court held he could not be wholly deprived of access to the Courts.

In the case of Lindquist v. Idaho State Board of Corrections, 776 F.2d 851 (9th Cir. 1985) (i.e. cited on page 21 of Petitioners' Writ of Certiorari), the state had provided a law library with photocopy equipment and other essentials such as inmate law clerks with training to help assist inmates with legal problems. Id. 776 F.2d at 855. The law clerks received training in research and legal writing after which they would provide legal assistance to disadvantaged inmates to the courts.

The Court took judicial notice that the clerks had experience and did an excellent job, and that this program met the constitutional minimum requirements. Id. 776 F.2d at 857. This is a similar type of program the respondents have been providing for 7 years prior to Bounds v. Smith, supra, and continues to provide as of date. The eradication of which would make access to the courts for the majority of Graterford inmates chimeric and a fantasy.

The case of Cepulonis v. Fair, 732 F.2d 1 (1st Cir. 1984) is likewaise distinguishable from the case sub judice. (i.e. as it is set forth on pages 21 &22 in Petitioners' Writ of Certiorari). This case like the plaintiffs in Campbell v. Miller, supra, were in disciplinary segregation for alleged offenses or crimes committed against guards and/or fellow inmates. Non obstante their security threat, they were allowed de minimis access to the law library which they claimed inadequate to allow access to the courts. After taking evidence the Court ordered a satellite law library placed in the disciplinary segregation unit with 5 hours a week of assistance from second and third year law students. The Circuit Court reversed only on the issue of assistance of the law students, because the state was not given an opportunity to institute their program of use of the law library with assistance from inmate legal clerks.

A discerning perusal of the four cases supra, by this Court would manifest any conflict with the subject Circuits wanting. Ipso facto they are more analogous than antithetical, as can be seen from the District Court's prior holding herein infra.

The Court below said in Wade v. Kane, 448 F.Supp. 678 (E.D. Pa. 1978):

> Interrupting and terminating the Clinic's operations violate the Constitutional rights of Graterford's inmates in another even more direct sense: Inmates who are unable to perform their own legal research have a constitutional right to legal assistance from other inmates, in the absence of adequate assistance from lawyers, even where the prison makes available an adequate law library.
>
> Id. 448 F.Supp. at 684, aff'd 591 F.2d 1338 (3rd Cir. 1979) accord Cf. 32a

The case sub judice vis a vis Bounds v. Smith is in pari passu therewith considering this Court's statement therein set forth infra.

> They argue that under Johnson v. Avery, as long as inmates communication on legal problems are not restricted, there is no further obligation to expand State funds to implement affirmately the right of access. This argument misreads the case.
>
> Id. 430 U.S. at 823, 97 S.Ct. at 1496

From the forgoing it is obvious the Third Circuit Court of Appeals' affirmance of the District Court's Orders and Opinions was legally correct. Ergo for the forgoing reasons set forth supra, Petitioners' Writ of Certiorari should be denied.

**********

2. The Court should not grant the Petition for there is no new important Constitutional issues raised by the decision of the Court of Appeals. Nor does the decision severely curtail the discretion of prison officials nor impose on the State obligations of uncertain textual footing in the Constitution.

Contrary to the petitioners' assertions in their Writ of Certiorari, the respondents herein provide inmates assistance in direct appeals as well as motions for new trials and motion in arrest of judgment (i.e. these motions are pre-judgment motions) along with Habeas Corpus Petitions, Civil Rights actions, and misconduct hearings, etc. Cf. 14a & 15a. This assistance is carried out by respondents under the stricture and security of the petitioners. This Court has long recognized prisoner's right to such assistance as that provided in the case sub judice. Cf. Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 474 (1969); Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974)

However, the petitioners argue this assistance should be discarded because this right is not extended to our counterparts who are illiterate and indigent in free society. However State law does ipso facto provide for free legal assistance for indigent citizens amoung the free populace, e.g. see Title 16 P.S. section 5199.8A (i.e. Legal aid service to indigent citizens in civil matters); accord American Liberties Union. Also see 16 P.S. section 9960.1 thru 9960.10a known as the Public Defenders Act, specifically see section 9960.6 and 996010a (i.e. Representation given indigent citizens in criminal matters), accord Rule 316 of the Pennsylvania Rules of Criminal Procedure.

Even though the Constitution does not provide judicial remedies for every social and economic ill (i.e. the respondents herein believes the government has an affirmative duty to provide for the general welfare of all its citizens, Cf. Preamble of United States Constitution, accord Article 1 Section 8 Clause 1. And the Court has an affirmative duty to interpret and enforce the same. Article 3 Section 1 and Section 2, Clauses 1 and 2.). The government does have Constitutional obligations to the free world, which often differs radically in the prison context.

Because of the very fact of incarceration, the Supreme Court has recognized that

> It is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of liberty, care for himself (or herself).
>
> Cf. Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, at 341 (3rd Cir. 1987)

Furthermore the Court stated that cost will not justify the complete denial of Constitutional rights, particularly when due to inaction or failure of the State to provide the necessary funds. Id. 834 F.2d at 336 and 337. In the case sub judice petitioners obtain L.E.A.A. grants (i.e. Law Enforcement Assistance Administration grants pursuant to 42 U.S.C.A. section 3711 et seq.) to augment any de minimis cost herein. The respondents op cit predates Bounds v. Smith, supra, by at least 7 years. Now that the petitioners have decided to install an addendum (i.e. a law library) with incurred cost, they should be commended. However, by no means should it be accepted in this case as an object to eradicate respondents, who are the only impetus for meaningful access to the Courts for most of Graterford's inmates.

This Court should not look at the case sub judice in vacuo, for this case involves the First Amendment right to petition the government for a redress of grievances via the Court. For most of Graterford inmates, this right would be impervious and a mere chimera save the respondents.

## CONCLUSION

For all the forgoing reasons, the Petitioners' Writ of Certiorari should be denied, and the decision of the Court of Appeals For The Third Circuit should be affirmed.

Respectfully submitted,

ahmad abdul Jabbar-al Samad a/k/a Roy Williams

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APPENDIX 1a

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 87-1193

(D.C.Civil 78-0538 - EASTERN DISTRICT OF PENNSYLVANIA)

UNITED STATES OF AMERICA EX REL.
PARA-PROFESSIONAL LAW CLINIC AND
BRADLEY, GEORGE #F-0281 AND
EL, JARVIS, CURTIS #F-6690 AND
ZAPATA, MONSERATE #F-0430 AND
WELLS, BEBLEY, C., JR. #F-0253 AND
MILES, CARL #F-7808 AND
CLIFTON, ZEBBIE #F-5043 and
SMITH, HAROLD X #F-6433 AND
ON BEHALF OF ALL OTHERS (INMATES)
OF THE GRATERFORD INSTITUTION
SIMILARLY SITUATED, ET AL.

v.

KANE, ROBERT P. ATTORNEY GENERAL OF THE
COMMONWEALTH OF PENNSYLVANIA AND
ROBINSON, WILLIAM B., COMMISSIONER OF
CORRECTIONS OF THE COMMONWEALTH OF
PENNSYLVANIA AND CUYLER, JULIUS T.,
SUPERINTENDENT OF GRATERFORD PRISON
AND SIMS, DANIEL T., DEPUTY SUPERINTENDENT
OF GRATERFORD PRISON, ET AL.,
Appellants

---

Before: HIGGINBOTHAM, SLOVITER and MARIS, Circuit Judges.

ORDER

After consideration of all contentions raised by appellants, it is

ADJUDGED AND ORDERED that the judgment of the district court is affirmed for the reasons noted in Chief Judge Emeritus Joseph S. Lord's opinion.

Costs taxed against appellants.

BY THE COURT,

Circuit Judge

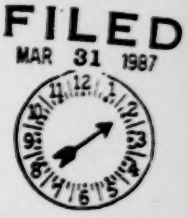
DATED: NOV 4 1987

# APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, ex rel. PARA-PROFESSIONAL LAW CLINIC, et al. | : | CIVIL ACTION |
| -v- | : | |
| ROBERT P. KANE, et al. | : | NO. 78-538 |

FILED MAR 25 1987




P.P.L.C. INC.
ADM. OFFICE

O P I N I O N

Lord, S.J. March 24, 1987

Background

On or about January 27, 1976, inmates at the State Correctional Institute at Graterford ("Graterford") formed the Para-Professional Law Clinic ("PPLC" or "Clinic") to provide legal assistance to Graterford inmates. In December 1977 the prison announced plans to close PPLC. Certain inmates moved for a preliminary injunction. After a two day hearing I found that closing PPLC violated inmates' rights to obtain legal assistance from other inmates and, in the absence of an adequate law library, inmates' rights of access to the courts. I ordered that the Clinic be reopened. Wade v. Kane, 448 F. Supp. 678 (E.D. Pa. 1978). The Third Circuit affirmed. Wade v. Kane, 591 F.2d 1338 (3d Cir. 1979).

After I issued the preliminary injunction in Wade, another group of inmates filed a complaint, Para-Professional Law Clinic v. Kane, C.A. No. 78-538, raising the same issues addressed in Wade. These two actions were consolidated.

ENTERED: 3/24/87



CLERK OF COURT

After settlement negotiations proved unsuccessful, a final hearing was held. None of the Wade plaintiffs remained incarcerated at Graterford, and that action was dismissed with prejudice. I therefore have before me only C.A. No. 78-538. However, since this case and the Wade case were consolidated and would unquestionably have been tried together as one case, I considered the evidence presented in both cases rather than engage in the duplicative and unnecessary process of re-presenting all the evidence taken in Wade. After careful review of the evidence presented at the original and final hearings, I make the following findings of fact and conclusions of law.

Findings of Fact

1. Graterford provides inmates an institution-run law library ("library"). At the time of the final hearing, the library contained up-to-date collections of United States Supreme Court Reports, Federal Reporter, Federal Supplement, Pennsylvania Reporter (Atlantic Reporter, Second Series), selected federal and state statutes and Shepard's Federal Citations. The library also contained numerous research and reference aids.[1]

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1. The library contains, inter alia, digests of state and federal law; legal dictionaries; L. Yackle, Post Conviction Remedies; J. Cook, Constitutional Rights of the Accused; E. Devitt & C. Blackmar, Federal Jury Practice and Instructions; W. Patton, Criminal Trial Manual for Pennsylvania; C. McCormick, McCormick's Handbook of the Law of Evidence; and portions of Moore's Federal Practice.

2. The library is open Monday thru Friday from 8:30 a.m. to approximately 11:20 a.m., 1:00 p.m. to approximately 3:20 p.m., and 6:30 p.m. to 8:30 p.m.

3. The library occupies approximately 700 square feet and can accommodate approximately twenty inmates. If more than twenty inmates wish to use the law library at any one time, they may work in the adjacent general library. The general library is open Monday thru Friday, from 8:30 a.m. to approximately 11:20 a.m., and 1:00 p.m. to approximately 3:20 p.m.

4. The library employs six or seven inmates as legal reference aides ("aides").

5. All aides are scheduled to work at all times the library is open. However, on average only two or three aides are present at any particular time. At various times the library has employed a Spanish-speaking aide.

6. Aides (but not Clinic members) are not permitted to give inmates legal assistance or advice during working hours, since this might diminish the number of inmates able to enlist the primary purpose of the aides, to locate citations and law books. Aides are permitted to assist inmates only by locating library materials and showing inmates how to use such materials.

7. Library aides are not required to have training in legal research; the only job qualification is an interest in working in the library. One aide has completed a

state-sponsored workshop on legal research. There is no evidence that any other aides have received training in legal research.

8. Generally, there are no problems resulting from noise or overcrowding in the library. There is no evidence as to whether the library would be overburdened if PPLC is closed.

9. The library is located away from inmate cells. Generally, inmates must apply to their cell block officer for a pass to obtain access to the library.

10. Inmates housed in the Classification Center must obtain a pass from the librarian to obtain access to the library.

11. There is no evidence of a system whereby inmates who wish to confer concerning legal problems can gain access to the library at the same time. There is no regulation prohibiting inmates who wish to confer concerning legal problems from attempting to obtain library passes for the same time. There is evidence that passes are not always honored. As a practical matter, it is difficult for inmates to arrange to meet in the library to confer about legal problems.

12. Inmates placed in administrative or disciplinary custody are housed in the Restricted Housing Unit ("RHU") or in E Gallery. There are approximately forty inmates housed in RHU and approximately 120 inmates housed in E Gallery. These inmates are not authorized to leave their housing units and are unable to obtain passes for the library.

13. Inmates on RHU or E Gallery may submit a request slip for a case or book, or legal topic they wish to have researched. Aides perform requested research. One or two days after receiving a request slip, the library will provide three or four books or cases.

14. The library provides a pencil and few sheets of paper upon request.

15. The library contains no Spanish-language legal reference materials.

16. Graterford inmates take placement tests in reading, spelling and arithmetic. A study completed several years ago found that Graterford inmates scored at the 7.3 grade level on these tests. A more recent study found that the average reading level was at the 6.4 grade level.

17. A report completed several years ago estimated that approximately 23% of Graterford inmates read at a "pre-functional" level. The Director of Treatment estimates that 300 to 325 Graterford inmates are functionally illiterate.

18. A handbook produced by the inmate-run Prison Literacy Project states that the Graterford education department estimates that 1400 of 2400 Graterford inmates are functionally illiterate.

19. A Clinic member estimated that, in 1978, 30 to 50% of Graterford inmates were functionally illiterate.

20. Approximately one-third of the 168 Hispanic inmates at Graterford can understand, read and write English. Spanish-speaking inmates who cannot read or write English need assistance to utilize library materials.

21. Graterford offers a variety of educational programs, including an adult basic education program leading to a high school equivalency diploma, a computer literacy course, and a tutoring program in English as a second language.

22. Prison counselors are available to help illiterate inmates contact attorneys and courts. A Spanish-speaking counselor is available to assist Hispanic inmates. Counselors are not qualified to give legal advice to inmates.

23. PPLC is a non-profit corporation formed under Pennsylvania law for the purpose of providing legal services to Graterford inmates.

24. PPLC presently maintains an office on each cell block, i.e., cell blocks A, B, C, D and E. The Clinic also has an office off the main corridor ("main office") which is approximately as large as two cells and an office/library of approximately 700 square feet located in the prison school building.

25. Inmates do not need a pass to visit the Clinic office on their cell block. Inmates have access to the Clinic office on their cell block at any time the office is open.

26. Clinic cell block offices are open from 8:00 a.m. to 11:20 a.m., 1:00 p.m. to 3:20 p.m., and 6:00 p.m. to 8:45 p.m.

27. The Clinic's main office and office/library are accessible on a limited basis to blocks A, B, C and D inmates.

28. The Clinic office on cell block E provides legal assistance to inmates in administrative and disciplinary custody. Clinic members obtain special passes to enter cell block E.

29. Clinic members perform legal services for other Graterford inmates. There are approximately sixteen to twenty Clinic members.

30. Clinic members represent inmates in Post-Conviction Hearing Act cases, motions for new trial, direct appeals, motions in arrest of judgment, habeas corpus petitions, civil rights actions, misconduct hearings and other actions affecting inmates' welfare. Clinic members also help inmates prepare letters to courts and outside counsel, and explain communications to inmates from courts and outside counsel.

31. In 1984 PPLC produced 172 notices of appeal, 984 writs, motions and petitions, 78 letters to judges, 191 letters to attorneys, 113 letters to clerks of court, and 90 miscellaneous letters.

32. Clinic members often work in excess of twelve hours per day on behalf of inmates.

33. On numerous occasions, Clinic members have provided both adequate and successful legal representation for Graterford inmates.

34. In 1978, a Clinic member testified that 80% of the clients he serviced over a four year period were unable to read and comprehend legal reference materials.

35. Within a six month period, all of the Hispanics unable to understand English are referred at one time or another to the Clinic.

36. PPLC by-laws prohibit members from receiving compensation from inmates for services rendered. Graterford pays between $520 and $820 per month in salary to members of the Clinic.

37. PPLC services many inmates unable to obtain court appointed counsel. Inmates are generally unable to obtain court appointed counsel to ascertain whether they have claims upon which relief can be granted.

38. By representing inmates at very low compensation from Graterford and without fee from inmates, the Clinic enables courts to avoid incurring the expense of appointing counsel in many cases.

39. Prison regulations do not permit more than one client inside a cell block office at any one time. Therefore, the cell block offices provide private areas conducive to confidential legal communications.

40. PPLC's main office may be used for confidential legal discussions.

41. PPLC's office/library in the school building does not afford the privacy necessary for confidential legal discussions.

42. Up to five pairs of inmates can hold confidential legal discussions in the law library. In addition, several pairs of inmates could hold confidential legal discussions in the general library.

43. Prisoners may do legal work in their cells. However, prisoners are not permitted inside another inmate's cell. Therefore, inmate cells may not be used for confidential legal discussions.

44. Although inmates are not prohibited from assisting each other in legal matters, due to the noise level and traffic interruptions, the block recreation facilities are unsuitable for confidential legal discussions.

45. If the Clinic is closed and members are assigned to other full time jobs, it is unlikely that they will have the time or the energy to perform legal services for other inmates.

46. There are approximately 25 to 30 well known jailhouse lawyers who are not Clinic members.

47. There is no evidence of a system, other than the Clinic, whereby inmates who require legal assistance and

inmates who are willing and able to provide legal assistance can officially make their presence known to one another.

48. Other than the library and research aides, Graterford provides no legal services or assistance to inmates.

49. Graterford's inmate capacity is 2100. At the time of the final hearing, Graterford's inmate population exceeded 2500.

50. Prison overcrowding has led to double celling. Double celling presents security concerns and administrative problems.

51. Due to prison overcrowding, an area off the main corridor has been converted into a dormitory.

52. A number of cells are presently used for storage.

53. PPLC's main office and office/library are not suitable for housing inmates. Closing all PPLC block offices would provide housing space for 5 to 10 inmates.

54. Increased inmate population has led to increased inmate movement through the institution and difficulty in monitoring such movement. Contraband is passed from one cell block to another as inmates travel through the main corridor.

55. Clinic members add to general inmate movement by travelling to various Clinic offices. There is no evidence that PPLC members have abused their privileges to move within the prison.

56. Due to space limitations, the prison cannot adequately store and safeguard inmate property.

57. If the Clinic is closed, the prison intends to use PPLC's main office as a storage area for inmate property.

Discussion

At the time I issued the preliminary injunction, Craterford's library did not contain current volumes of United States Supreme Court Reports, Federal Reporter, Atlantic Reporter, or copies of §§ 2254 and 2255 of Title 28 of the United States Code (and annotations thereto), the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure, and various other indispensable legal research material. I had no difficulty finding that the library was inadequate to preserve inmates' constitutional rights. Wade, 448 F. Supp. at 684. The library has been substantially upgraded and is no longer constitutionally inadequate because of a lack of legal material.

However, the right at issue is not the right to an adequate law library, but rather the "fundamental constitutional right of access to the courts." Bounds v. Smith, 430 U.S. 817, 828 (1977). "The central question in evaluating whether a law library adequately provides meaningful access to the courts is whether the facility will enable the prisoners to fairly present their complaints to a district court." Cody v. Hillard, 599 F. Supp. 1025, 1060 (D.S.D. 1984) (quoting Cruz v. Hauck, 627 F.2d 710, 720 (5th

Cir. 1980)). As the library is unavailable to prisoners in administrative or disciplinary custody, and is useless to those who are functionally illiterate, the library, by itself, is totally ineffectual to preserve the fundamental right of access to the courts of these prisoners.

A. Inmates in Administrative and Disciplinary Custody

Prison regulations deny physical access to the library to the approximately 160 inmates in administrative or disciplinary custody. The prison's program of providing a small number of cases or books upon request does not satisfy the constitutional obligations set forth in Bounds.

Legitimate security considerations may justify restrictions on direct access to the library. See Campbell v. Miller, 787 F.2d 217 (7th Cir.), cert. denied, 107 S. Ct. 673 (1986) However, "[s]imply providing a prisoner with books in his cell, if he requests them, gives the prisoner no meaningful chance to explore the legal remedies he might have." Williams v. Leeke, 584 F.2d 1336, 1339 (4th Cir. 1978) (Haynsworth, C.J.), cert. denied, 442 U.S. 911 (1979). Accord, Cruz, supra; Canterino v. Wilson, 562 F. Supp. 106, 110 (W.D. Ky. 1983). This is so for several reasons. First, it is simply "unrealistic to expect a prisoner to know in advance exactly what materials he needs to consult." Williams, 584 F.2d at 1339. Second, prison "[r]estrictions on the amount of legal material[] . . . limit[s] the usefulness of research outside the library." Cepulonis v. Fair, 732

F.2d 1, 4-5 (1st Cir. 1984). Legal research often involves a painstaking study of a series of cases. Bounds suggested that, before filing a pleading, a prisoner would have to research "jurisdiction, venue, standing, exhaustion of remedies, proper parties plaintiff and defendant and types of relief available," as well as substantive law. Bounds, 430 U.S. at 825. Every judge and lawyer knows that, as a practical matter, it would be impossible to research adequately an action when access is limited to three or four books produced on one or two days notice.

There is no evidence that other prisoners may only use three or four law books at one time. Thus, the prison regulations violate Graterford's duty to insure that the "opportunity to do legal research [afforded those in administrative or disciplinary custody] must be at least the equivalent of the opportunity that is available to an inmate who is permitted to go personally to the prison law library." Wojtczak v. Cuyler, 480 F. Supp. 1288, 1301 (E.D. Pa. 1979). See also Smith v. Bounds, 610 F. Supp. 597, 602 (E.D.N.C. 1985) (inmates confined to disciplinary segregation must have the same access to law library as other inmates). These restrictions are not alleviated by the existence of jailhouse lawyers, or the assistance of research aides or prison counselors. There is no evidence that inmates in administrative or disciplinary segregation have access to jailhouse lawyers. Assuming arguendo that these inmates could

meet with jailhouse lawyers, there is no area in which they could engage in confidential legal discussions. Finally, there is no evidence that self-appointed jailhouse attorneys provide adequate legal assistance.

Only one of the legal research aides has completed a course in legal research. An untrained legal research staff is insufficient to safeguard inmates' rights of access to the courts. Although prison counselors may contact courts or attorneys on an inmate's behalf, they are not trained to do legal research or writing. Thus, they cannot compensate for a lack of access to the library.

There is no allegation or evidence that the legal research and services provided by Clinic members to inmates in administrative or disciplinary custody is inadequate. In the absence of other prison programs, eliminating the Clinic would leave those in administrative or disciplinary custody with inadequate access to the library and the courts, in violation of these inmates' fundamental constitutional rights.

B. Functionally Illiterate Inmates

Courts have consistently held that the mere provision of an adequate law library does not necessarily satisfy the constitutional obligation set forth in Bounds. An adequate law library, by itself, cannot provide meaningful access to the courts for those inmates unable to read and understand library materials. See, e.g., Cruz, 627 F.2d 710, 721 ("Library books, even if 'adequate' in number, cannot provide

access to the courts for those persons who do not speak English or who are illiterate"); Cody, 599 F. Supp. at 1061 ("a law library, without more, is not sufficient to enable prison inmates . . . unschooled in the basics of legal writing to prepare a petition or complaint") (citation omitted); Glover v. Johnson, 478 F. Supp. 1075, 1096 (E.D. Mich. 1979) (an adequate library "cannot provide meaningful aid to a prisoner unschooled in the most basic techniques of legal research"); Canterino, 562 F. Supp. at 108-112 (mere access to an adequate legal library is unavailing to prisoners lacking sufficient intellectual ability to use the facility).[2]

Defendants' contention that "law libraries alone will adequately satisfy the right to access to the courts" rests upon passages in Bounds stating that prisons must provide "prisoners with adequate law libraries or adequate assistance from persons trained in the law," Bounds, 430 U.S. at 828 (emphasis added) and that "adequate law libraries are one

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2. As one court pointedly observed:

> [A]ccess to the fullest law library anywhere is a useless and meaningless gesture [for] the great mass of prisoners . . . . To expect untrained laymen to work with extremely unfamiliar books, whose content they cannot understand, may be worthy of Lewis Carroll, but hardly satisfies the substance of the constitutional duty.
>
> Access to full law libraries makes about as much sense as furnishing medical services through books like: "Brain Surgery Self-Taught" . . . along with scalpels, drills, hemostats, sponges and sutures.

Falzerano v. Collier, 535 F. Supp. 800,803 (D.N.J. 1982).

constitutionally acceptable method to assure meaningful access to the courts." Id. at 830. Bounds reviewed a case decided on summary judgment, without the benefit of an evidentiary hearing. Thus, although the Supreme Court rejected the argument that inmates in general are "ill equipped to use" law libraries, id. at 826, there is no indication that the Bounds record included evidence regarding inmate illiteracy. See also Smith v. Bounds, 538 F.2d 541 (4th Cir. 1975) (no discussion of inmate illiteracy).[3] DuPont v. Saunders, 800 F.2d 0 (1st Cir. 1986) and Cepulonis v. Fair, supra, relied upon by defendants, do not address the question of whether an adequate law library provides functionally illiterate inmates with meaningful access to the courts. Similarly, in Campbell, supra, there was no allegation that the appellant lacked the capacity to utilize the prison's law library.

In Hooks v. Wainwright, 536 F. Supp. 1330 (M.D. Fla. 1982), the court found that more than fifty percent of Florida's inmate population was functionally illiterate. Senior District Judge Scott concluded that no plan utilizing libaries alone could assure meaningful access to the courts, and ordered defendants to provide "assistance of counsel, in

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3. In a later proceeding, the court found that the illiteracy rate of North Carolina inmates was extremely high. Smith v. Bounds, 610 F. Supp. 597, 604 (E.D.N.C. 1985). This was one of several factors that led the court to find that defendants' library system did not provide adequate access to the courts. Senior District Judge Dupree ordered defendants to provide inmates with assistance of counsel.

some form." Id. at 1349. The Eleventh Circuit reversed, declaring that Bounds does not require states to provide legal counsel to inmates. Hooks v. Wainwright, 775 F.2d 1433 (11th Cir. 1985). However, the appellate court recognized that providing inmates "access to libraries in prison, or access to people who have access to libraries," as I do here, is "a far cry from constitutionally requiring the state to provide legal counsel for the imprisoned." Id. at 1437. Thus, Hooks does not stand for the proposition that an adequate law library provides functionally illiterate inmates with meaningful access to the courts. It merely does not, as I do not here, require counsel as the only meaningful alternative.

It is difficult to determine the precise number of illiterate or functionally illiterate prisoners at Graterford. Evidence was presented on the number of illiterates, the number of functional illiterates, the percentage of prisoners who read at a "pre-functional" level, and the percentage of Clinic clients unable to comprehend legal materials. In most cases the operative terms remained undefined. For purposes of the constitutional right of access to the courts, functional literacy should not be measured in terms of a particular reading level. Rather, functional literacy, for these purposes, means that an inmate can, "with reasonable adequacy," fairly present his complaint to the courts. Johnson v. Avery, 393 U.S. 483, 489 (1969). See also Cruz,

627 F.2d at 720. Surely, all those considered illiterate or who read at a "pre-functional" level are unable to present fairly a complaint or petition to the courts without assistance. Similarly, Spanish-speaking inmates who cannot read or write English are unable to present, with reasonable adequacy, complaints to the courts without assistance. The evidence establishes that a substantial percentage of Graterford inmates are not functionally literate. This evidence merely confirms the Third Circuit's commonsense observation "of the fact that many prisoners are unable to prepare legal materials and file suits without assistance." Rhodes v. Robinson, 612 F.2d 766, 769 (3d Cir. 1979) (Seitz, C.J.).

It is also difficult to determine accurately the percentage of PPLC work done on behalf of functionally illiterate inmates. A Clinic executive was unable to estimate this figure at the March 1985 hearing. In 1978, a PPLC member testified that 80% of his clients were not functionally literate. Within any particular six month period, all the Hispanics who cannot read and understand English are referred to PPLC. The evidence establishes that a substantial percentage of PPLC's work is done for inmates who are not functionally literate.

The legal research aides and educational programs Graterford provides are insufficient to insure that functionally illiterate inmates have meaningful access to the courts. The library staff includes only one trained research aide, and although all aides are supposed to be in the library during working hours, typically at least half the aides are not present. In addition, it appears that only rarely is a Spanish-speaking aide present. Finally, aides are prohibited from providing legal advice to inmates during working hours.[4]

The prison is to be commended for providing a variety of educational programs. However, effectively denying a functionally illiterate inmate meaningful access to the courts until he completes a remedial education program is simply not acceptable. Finally, although inmates are not prohibited from conferring with non-Clinic jailhouse lawyers, there is no evidence regarding the competency of jailhouse lawyers or the ease of meeting and holding confidential legal discussions with them. Although I specifically ordered the presentation of evidence regarding the existence of a system whereby inmates who require legal assistance and inmates who

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4. For these reasons, the instant case is distinguishable from Lindquist v. Idaho State Board of Corrections, 776 F.2d 851 (9th Cir. 1985). In Lindquist, inmate law clerks received training in legal research and writing skills. The clerks viewed two 45 minute video cassette tapes and completed a training program led by an attorney. The court took judicial notice of the fact that the clerks "do an excellent job." Id. at 857. In addition, it does not appear that the clerks in Lindquist were prohibited from giving legal advice or writing assistance to inmates.

are willing and able to provide legal assistance can officially make their presence known to one another, defendants presented no evidence of any such system. Thus, there is no evidence that, if PPLC is closed, functionally illiterate inmates will have "alternative and readily available means of obtaining assistance of at least equal caliber." Bryan v. Werner, 516 F.2d 233, 237 (3d Cir. 1975). Relying on the prison grapevine to identify jailhouse lawyers is not sufficient to protect prisoners' constitutional rights. For this reason, the rights of functionally illiterate prisoners would be violated if PPLC is eliminated.

C. Security Concerns

Defendants presented evidence that PPLC's use of seven different areas exacerbates security and space problems in the prison. Generally, courts should afford great deference to prison officials in matters concerning the security and administration of prisons. However, prison officials may not restrict the scope of inmates' constitutional rights by making automatic and conclusory assertions of discipline and security in the support of restrictive policies. Cleavinger v. Saxner, 106 S.Ct. 496, 504 (1985).

The link between problems caused by overcrowding and PPLC's use of prison space is tenuous at best. Graterford's population exceeds capacity by some 400 inmates. I do not underestimate the serious problems this causes prison administrators. However, the main office and office/library

are not suitable for housing inmates. The office on E block provides the only space to hold confidential legal discussions for those in administrative or disciplinary custody. Closing the clinic offices on blocks A, B, C and D would provide housing for between 4 and 8 prisoners. However, the constitutional rights of inmates are not to be impaired because the State fails in its duty to provide adequate housing. Thus, the lack of adequate prison housing does not present a justification for closing PPLC.

Defendants presented evidence that the increase in traffic along the main corridor presents security concerns and that Clinic members travel to Clinic offices via the main corridor. With a prison population in excess of 2,500, I reject the notion that the sixteen to twenty Clinic members add significantly to the amount of traffic in the main corridor. Graterford's superintendent testified that even if the preliminary injunction is lifted, he would not close PPLC's office/library. If the cell block offices are closed, then the only remaining places inmates could hold confidential legal discussions with a Clinic member would be in the library, general library, or PPLC's main office. Inmates necessarily use the main corridor to reach any of these places. Thus, closing the block offices, while keeping the main office open, would result in increased inmate movement in the main corridor.

Finally, the prison lacks adequate space to store and safeguard inmate property. Defendants would like to use PPLC's main office as a storage area. Although inadequate storage space is not an insignificant problem, it cannot justify restriction of the fundamental constitutional right of access to the courts. For these reasons, security and space concerns do not justify the closing of any of PPLC's offices.

D. Relief

The final issue to be addressed is whether closing any of PPLC's offices will violate inmates' fundamental constitutional right of access to the courts. Defendants have represented that, even if the injunction is lifted, they have no plans to shut down the cell block E office or the office/library. However, defendants would eliminate the offices on cell blocks A, B, C and D and the main office. Evidence at the initial hearing established that closing the block offices would overburden the main office. There is no evidence that PPLC could provide adequate services without the use of its main office or that "reasonable alternatives for obtaining assistance" would be available. Bryan, 516 F.2d at 237.

Defendants have not questioned whether plaintiffs have suffered an actual injury, or an "instance in which an inmate was actually denied access to the courts." Hudson v. Robinson, 678 F.2d 462, 466 (3d Cir. 1982) (quoting Kershner

v. Mazurkiewicz, 670 F.2d 440, 444 (3d Cir. 1982)). After the Wade hearing, I found that closing the Clinic "has caused the plaintiffs and those who benefit from the services of Clinic members to suffer irreparable harm." Wade, 448 F. Supp. at 683. There has been no showing that inmates have been denied access to the courts since entry of the preliminary injunction. Assuming that the preliminary injunction served its purpose — to prevent irreparable injury to plaintiffs pendente lite — such a showing is impossible.

I refuse to lift the injunction and wait for another inmate to be denied access to the courts. To wait for an inmate with a valid habeas corpus or civil rights claim to be denied access to the courts is intolerable; based on my findings in Wade and above, such an injury is inevitable.

For the foregoing reasons, to allow defendants to close PPLC would violate the prison's "affirmative obligation[] to assure all prisoners meaningful access to the courts." Bounds, 430 U.S. at 824 (emphasis added).

## Conclusions of Law

1. This court has jurisdiction over the subject matter and parties in this case.

2. Because the Clinic gives legal advice and provides legal representation to functionally illiterate inmates, and inmates in administrative and disciplinary custody, it has standing to assert the constitutional right of access to the courts of these inmates.

3. Closing the Clinic would violate the constitutional rights of certain Clinic clients, including functionally illiterate clients and those housed in administrative or disciplinary custody, in violation of 42 U.S.C. § 1983.

4. Defendants have failed to provide any justification sufficient to warrant the violations of constitutional rights that would result from closing PPLC.

5. Plaintiffs are entitled to permanent injunctive relief.

Joseph S. Lord, III S.J.

APPENDIX 47a

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, ex rel. PARA-PROFESSIONAL LAW CLINIC, et al. | : | CIVIL ACTION |
| - v - | : | |
| ROBERT P. KANE, et al. | : | NO. 78-538 |

FILED MAR 25 1987

FILED
MAR 31 1987

P.P.L.C. INC.
ADM. OFFICE

ORDER

AND NOW, this 25th day of March, 1987, it is ORDERED that judgment is entered in favor of the plaintiffs and against the defendants. Defendants are PERMANENTLY ENJOINED from closing any PPLC office or facility.

BY THE COURT:

Joseph S. Lord, III S.J.

ENTERED: 3/26/87

CLERK OF COURT

APPENDIX 48a

RECEIVED
MAR 28 1987
P.P.L.C. INC.
GRATERFORD
PA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED MAR 26 1987

FILED
MAR 31 1987
P.P.L.C. INC.
ADM. OFFICE

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, ex rel. PARA-PROFESSIONAL LAW CLINIC, et al. | : | CIVIL ACTION |
| -v- | : | |
| ROBERT P. KANE, et al. | : | NO. 78-538 |

O R D E R

AND NOW, this 26th day of March, 1987, it is ORDERED that the order entered March 25, 1987 is MODIFIED to read as follows:

AND NOW, this 26th day of March, 1987, it is ORDERED that judgment is entered in favor of plaintiffs and against defendants. Defendants, their successors and their agents, servants or employees are permanently enjoined from closing any PPLC office or facility.

BY THE COURT:

Joseph S. Lord, III S.J.

ENTERED: 3/27/87

CLERK OF COURT (48a)

APPENDIX 49a

JOHN J. ...
CLERK, UNITED STATES DISTRICT ...
EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA 19106

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA<br>EX REL. | : | CIVIL ACTION |
| PARA-PROFESSIONAL LAW CLINIC<br>P.O. BOX 244<br>GRATERFORD, PENNSYLVANIA 19426 | : | |
| AND | : | |
| GEORGE BRADLEY, #F-0281<br>AND<br>CURTIS JARVIS EL, #F-6990<br>AND<br>MONSERATE ZAPATA, #F-0430<br>AND<br>BEBLEY C. WELLS, JR., #M-0253<br>AND<br>CARL MILES, #F-7808<br>AND<br>ZEBBIE CLIFTON, #F-5043<br>AND<br>HAROLD X. SMITH, #F-6433<br>AND<br>ON BEHALF OF ALL OTHERS<br>(INMATES) OF THE GRATERFORD<br>INSTITUTION, SIMILARLY SITUATED<br>ET AL.,<br>(PLAINTIFFS) | : | FILED APR 20 1978 |
| VS. | : | |
| ROBERT P. KANE, ET AL.<br>ATTORNEY GENERAL OF THE<br>COMMONWEALTH OF PENNSYLVANIA<br>AND<br>WILLIAM B. ROBINSON, ET AL.<br>COMMISSIONER OF CORRECTIONS<br>OF THE COMMONWEALTH OF<br>PENNSYLVANIA<br>AND<br>JULIUS T. CUYLER, ET AL.<br>SUPERINTENDENT OF<br>GRATERFORD PRISON<br>AND<br>DANIEL T. SIMS, ET AL.<br>DEPUTY SUPERINTENDENT<br>OF GRATERFORD PRISON,<br>(DEFENDANTS) | : | NO. 78-538 |

(49a)

ORDER

FILED [illegible]

BECHTLE, J.

AND NOW, to wit, this 18th day of April, 1978, after consideration of the pleadings herein and after review of the Report and Recommendation of Tullio Gene Leomporra, United States Magistrate, it is ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED.

2. The Petition for Leave to Proceed in Forma Pauperis is GRANTED. 28 U.S.C. § 1915(a).

It is so ORDERED.

BY THE COURT:

/s/ Louis C. Bechtle
LOUIS C. BECHTLE J.

ENTERED: 4/21/78

CLERK OF COURT

(49 a-1)

APPENDIX 50a

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 87-1193

United States of America Ex Rel.
Para-Professional Law Clinic, et al.
vs.
Kane, Robert P., etc., et al., Appellants

(E.D.Pa. Civil 78-0538)

To: CLERK

1) MOTION BY APPELLEES

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
21400 U. S. COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

Mr. Ahmad Abdul Jabbar-al Samad, M-1008
Mr. Hugh Williams, F-2932
Ms. Zebbie Clifton, F-5043
Mr. Bebley Wells, M-0253
State Correctional Institution
P.O. Box 244
Graterford, PA 19426

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The foregoing Motion IS DENIED AS UNNECESSARY EXCEPT INSOFAR AS FILING TYPEWRITTEN BRIEFS. THE APPELLEES JABBAR-AL SAMAD, CLIFTON AND WILLIAMS ARE GRANTED LEAVE TO FILE TYPEWRITTEN BRIEFS. INSOFAR AS THE APPELLEE, WELLS, DID NOT SIGN THE MOTION AND THE OTHER APPELLEES MAY NOT REQUEST RELIEF ON HIS BEHALF, THE RELIEF GRANTED IN THIS MOTION DOES NOT APPLY TO HIM.

For the Court,

Sally Dilworth

Clerk

(50a)

Dated: May 5, 1987

dt/cc: Maria Parisi Vickers, Esq.
(Mr. Ahmad Abdul Jabbar-al Samad, etc.)

## CERTIFICATE OF SERVICE

HUGH WILLIAMS, co-counsel and secretary of Respondent Para-Professional Law Clinic, Inc., hereby certifies and says that a true and correct copy of the Respondents' Brief In Opposition To Petition For Writ of Certiorari To The United States Court of Appeals For The Third Circuit, was served on the persons below and in the manner and date indicated

LeRoy Zimmerman
Attorney General

John G. Knorr, III
Chief Deputy Attorney General

Gregory R. Neuhauser
Senior Deputy Attorney General

Maria Parisi Vickers
Chief Deputy Attorney General
Chief, Eastern District
Counsel of Record

Attorney for Petitioners

206 State Office Building
Philadelphia, PA. 19130

Via First Class U.S. Mail

Dated: MAR 8 1988

Hugh Williams
Hugh Williams, Sec'y
Para-Professional Law Clinic
Post Office Box 244
Graterford, Pennsylvania 19426

Under of penalty of law pursuant to 18 U.S.C. section 1001